



Department of Energy
National Nuclear Security Administration
Office of the General Counsel
P. O. Box 5400
Albuquerque, NM 87185



JUL 26 2019

SENT VIA EMAIL

77007-73578089@requests.muckrock.com

Mr. Martin Pfeiffer
MuckRock News
DEPT MR 74639
411a Highland Ave
Somerville, MA 02144-2516

RECEIPT OF FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Pfeiffer:

This letter acknowledges the receipt of your July 11, 2019 Freedom of Information Act (FOIA) request. You requested the following:

“Records—including but not limited to emails, letters, memos, minutes of conversations, provided evidence, meeting records, etc.—produced in relation to or bearing on the following FOIA requests and the decision of NNSA FOIA officers not to grant my requested fee status in these requests; to assign me commercial fee status; and those records created in the process of appeal especially (but not limited to) including communications from NNSA personnel to the Office of Hearing and Appeals. Please be sure to include records produced in response to my appeal including communications and records provided to the Office of Hearing and Appeals (and vice versa). The requests were originally assigned the following control numbers: Request Nos. FOIA-19-00232- EW, FOIA-19-00237-EW, FOIA-19-00231-DD, FOIA-19-00234-M. The OHA assigned them the following OHA Case Nos. FIA-19-0020, FIA-19-0021, FIA-19-0022, FIA-19-0023.”

Your request was received in this office on July 16, 2019. It is the practice of the National Nuclear Security Administration, in accordance with Departmental policy, to process FOIA requests in the approximate order of the date received by this office. We will make every effort to respond to your request as quickly as possible. Although we are committed to responding to your request in a timely manner, we estimate that we will not be able to respond to your request in 20 working days. We need more time to complete the search of facilities geographically separated from this office, review the record(s) for release, and prepare the response to you, as some requests, depending upon the volume of records, the complexity of the search, and/or the sensitivity of the subject matter, require additional time to complete. Reformulating or otherwise narrowing the scope of your request may result in a quicker processing time.

In your FOIA request you identified yourself in the educational/scientific category for fee purposes. You stated that you intend to use the information requested as part of your PhD dissertation project

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and that you will make responsive records available to the public via academic publications and presentations; on social media and through News Site MuckRock.com and that one can access your UNM student profile page. The agency asked you for additional information pursuant to 10 CFR 1004.2(c) regarding the intended use of the requested documents. After the agency asked for clarification, you did not provide any new information. Your request for that fee category is denied because we have determined the use of records you requested is for your commercial or profit interest because you also charge a fee to patrons of your website for viewing/accessing records the agency provides to you. Based on our determination you are categorized as a "commercial use requester." Therefore charges will be assessed to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Our agency will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records. This request is currently pending and processing will begin once we are notified of your willingness to either pay all fees, or notify us of the exact dollar amount of fees you are willing to pay, in accordance with 10 CFR § 1004.4(e). If we do not receive a response regarding your willingness to either pay all fees or your willingness to pay fees up to a stated dollar amount by August 6, 2019, we will consider your request invalid and will close it with no further action.

You may appeal our denial of fee category pursuant to 10 CFR § 1004.8(a). Such an appeal must be made in writing within 90 calendar days after receipt of this letter, addressed to the Director, Office of Hearings and Appeals, HG-1, U.S. Department of Energy, 1000 Independence Avenue SW, L'Enfant building, Washington, DC 20585. Your appeal must contain a concise statement of the grounds for the appeal and a description of the relief sought. Please submit a copy of this letter with the appeal. Please clearly mark both the envelope and the letter "Freedom of Information Appeal." You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase "Freedom of Information Appeal" in the subject line. Thereafter, judicial review will be available to you in the District of Columbia or in the district where (1) you reside, (2) you have your principal place of business, or (3) the Department's records are situated.

You may contact me, as NNSA's FOIA Public Liaison at 1(866)747-5994, or by mail at Department of Energy, National Nuclear Security Administration, Office of the General Counsel, PO Box 5400, Albuquerque, NM 87185, for further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at (202)741-5770; toll free at 1(877)684-6448; or facsimile at (202)741-5769.

If you have questions concerning the processing of this request, please contact Delilah Perez by e-mail at Delilah.Perez@nnsa.doe.gov, or write to the address above. Please reference Control Number FOIA 19-00275-M in your communication.

Sincerely,



Pamela Arias-Ortega
Authorizing & Denying Official